

## **EXHIBIT G**

VOLUME: 1 PAGES: 1 - 77 EXHIBITS: 1 - 8

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

----- X

LEXINGTON INSURANCE COMPANY

and NATIONAL UNION FIRE

INSURANCE COMPANY OF

PITTSBURGH, PA,

Plaintiffs,

Civil Action

vs.

No. 04-11109 RGS

VIRGINIA SURETY COMPANY, INC.,

Defendant.

----- X

DEPOSITION OF ELIZABETH VISCIONE

Tuesday, August 1, 2006

9:57 a.m.

Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

One Financial Center

Boston, Massachusetts 02111

Reporter: Dana Welch, CSR, RPR

Certified LiveNote Trainer

Page 2

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 23  
 24

Page 3

## 1 INDEX

2 WITNESS:

3 ELIZABETH VISCIONE

5 EXAMINATION:

PAGE:

6 BY MR. CRAMB

4

8 EXHIBIT NO. DESCRIPTION

PAGE:

9 1, LU 15644 through LU 15645 19  
 10 2, ME 00448 through ME00550 and ME 03796 28  
 11 through ME 03843  
 12 3, LEXCF 018007 47  
 13 4, LEXCF 001293 through LEXCF 001294 49  
 14 5, May 8, 2003 letter from McNamara 51  
 15 to Lubin  
 16 6, LEXCF 003080 through LEXCF 003082 53  
 17 7, LU 06383 through LU 06384 62  
 18 8, LEXCF 047875 through LEXCF 047921 64  
 19

20 Exhibits retained by Attorney Cramb.  
 21  
 22  
 23  
 24

Page 4

## 1 PROCEEDINGS

2 ELIZABETH VISCIONE,

3 having been satisfactorily identified by the  
 4 production of her driver's license, and duly sworn  
 5 by the Notary Public, was examined and testified as  
 6 follows:

7 MR. CRAMB: Mr. Cohen, do we agree that  
 8 we're going to reserve all objections except  
 9 as to form until trial?

10 MR. COHEN: Sure.

11 MR. CRAMB: Do you want to allow your  
 12 witness to read the transcript, take 30 days?

13 MR. COHEN: Yes.

14 MR. CRAMB: And waive notary?

15 MR. COHEN: Yes.

## 16 DIRECT EXAMINATION

17 BY MR. CRAMB:

18 Q. Mrs. Viscione, my name is Nick Cramb, and  
 19 I represent the defendant in this case, Virginia  
 20 Surety Company.

21 I'm going to ask you a number of questions  
 22 about the lawsuit that brings us here today. And  
 23 since we're creating a transcript of your sworn  
 24 testimony, I just want to ask that you answer

Page 5

1 questions verbally instead of nodding your head or  
 2 some other nonverbal gesture. And that if you ever  
 3 do not understand a question, please ask me to  
 4 clarify it so that we create a clear record of your  
 5 understanding.

6 Can you please state your name for the  
 7 record.

8 A. It's Elizabeth Viscione, or Betty  
 9 Viscione.

10 Q. And what's your address?

11 A. Address? It's 77 Adams Street in Quincy.

12 Q. And who do you work for?

13 A. I work for Lexington Insurance Company.

14 Q. And that's one of the plaintiffs in this  
 15 case?

16 A. Yes.

17 Q. And what's your position there?

18 A. I'm a unit manager in the claims  
 19 department.

20 Q. Is there anything that would prevent you  
 21 from testifying accurately or truthfully today?

22 A. No.

23 Q. What did you do to prepare for the  
 24 deposition today?

Page 22

1 Q. Can you explain your understanding of the  
2 lawsuit that AIG brought against Virginia Surety  
3 Company or National Union and Lexington Insurance  
4 Company brought against Virginia Surety Company?  
5 A. Uh-huh. I understand that it's a dec  
6 action seeking a declaration that our policies are  
7 excess policies.  
8 Q. Do you know how many policies National  
9 Union issued to the National Coalition of Property  
10 Owners and Managers, NCOPO?  
11 A. Not off the top of my head, I don't know  
12 the number.  
13 Q. Do you know what type of form the National  
14 Union policies are written on?  
15 A. A CGL form.  
16 Q. What is that?  
17 A. Commercial general liability form.  
18 Q. What does that mean?  
19 A. It outlines the terms and conditions of  
20 coverage under a commercial general liability  
21 policy.  
22 Q. And what is a commercial general liability  
23 policy?  
24 A. A policy that provides general liability

Page 23

1 coverage.  
2 Q. Were all of the NCOPO program National  
3 Union policies written on the same form?  
4 A. No.  
5 Q. What different forms were they written on?  
6 A. Let me clarify. The CGL form itself, I  
7 don't know if the exact form was used or not. Some  
8 of the policies were issued with a declarations  
9 page that said it was a commercial general  
10 liability policy; others were issued with a dec  
11 page that said stand-alone excess policy.  
12 Q. Okay. Was there -- do you know when or  
13 why the stand-alone excess policies were used?  
14 A. Not exactly sure why.  
15 Q. Were all of the policies that were written  
16 on the National Union paper that had the National  
17 Union dec page that you just described on the same  
18 CGL form?  
19 MR. COHEN: Object.  
20 Q. Yeah, that was a confusing question. Let  
21 me ask it again.  
22 Except for the stand-alone excess policies  
23 that you just referred to, are all of the National  
24 Union policies written on the same form?

Page 24

1 A. I believe they are.  
2 Q. Is that an ISO standard form?  
3 A. I don't recall.  
4 Q. Is it a primary form?  
5 A. I believe it is.  
6 Q. Do the -- just so we can distinguish  
7 between the National Union policies that you  
8 referred to or the CGL policies and the stand-alone  
9 excess policies, can we refer to the National Union  
10 CGL policies as program policies and the  
11 stand-alone excess policies as stand-alone or  
12 post-program policies?  
13 MR. COHEN: I think the problem with that  
14 is not all the post-program policies were  
15 written on the same forms.  
16 MR. CRAMB: Fair enough.  
17 MR. COHEN: Nor are the program policies,  
18 for that matter.  
19 Q. Just so we're clear about what we're  
20 talking about, can I refer to -- will you  
21 understand what I'm referring to if I refer to the  
22 National Union CGL policies as that and the  
23 stand-alone excess policies as a separate category  
24 of policies?

Page 25

1 A. If I don't understand, I'll ask you to  
2 clarify.  
3 Q. Okay. Did the National Union policies,  
4 National Union CGL policies have a deductible or a  
5 self-insured retention?  
6 A. They had a self-insured retention.  
7 Q. And what is that?  
8 A. Self-insured retention is where an insured  
9 retains part of the loss. Our policy does not come  
10 into play until or unless the underlying is  
11 exhausted.  
12 Q. And in the National Union CGL policies,  
13 what is the amount of the self-insured retention?  
14 A. \$250,000.  
15 Q. Does that include defense and indemnity  
16 expenses?  
17 A. Yes.  
18 Q. What does that mean?  
19 A. It means exactly what you said. It  
20 includes defense and indemnity.  
21 Q. So does that mean that as soon as \$250,000  
22 is spent by an insured on either defense or  
23 indemnity or incurred by an insured on either  
24 defense and indemnity expenses on a loss, that the

<p style="text-align: right;">Page 26</p> <p>1 National Union CGL policy attaches?</p> <p>2 MR. COHEN: Object.</p> <p>3 THE WITNESS: As soon as it is incurred by</p> <p>4 an insured, because it's a self-insured</p> <p>5 retention, our policy would attach.</p> <p>6 Q. So as soon as an insured incurs \$250,000</p> <p>7 of defense or indemnity expenses, the National</p> <p>8 Union CGL policies attach?</p> <p>9 MR. COHEN: Object.</p> <p>10 THE WITNESS: As soon as \$250,000 is paid</p> <p>11 by an insured, our policy would attach.</p> <p>12 Q. Is there anything in the National Union</p> <p>13 CGL policies that require that NCOPO insure the</p> <p>14 SIR?</p> <p>15 A. There's nothing in there that requires</p> <p>16 that they insure their self-insured retention.</p> <p>17 Q. Can you explain to me the difference</p> <p>18 between a self-insured retention and a deductible?</p> <p>19 A. Yes.</p> <p>20 Q. Please do.</p> <p>21 A. Well, I will explain the way Lexington</p> <p>22 handles deductibles as opposed to self-insured</p> <p>23 retentions.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 28</p> <p>1 (Exhibit No. 2, ME 00448 through ME00550</p> <p>2 and ME 03796 through ME 03843, marked for</p> <p>3 identification.)</p> <p>4 Q. What's just been marked as Exhibit</p> <p>5 Number 2 is a binder that contains two policies.</p> <p>6 At tab A is a National Union Fire Insurance Company</p> <p>7 policy. This is a CGL policy.</p> <p>8 Can you just tell me if this is the -- by</p> <p>9 taking a quick look, if this is the type of policy</p> <p>10 that we've been discussing, a National Union CGL</p> <p>11 policy?</p> <p>12 A. This does appear to be a National Union</p> <p>13 CGL policy, yes.</p> <p>14 Q. And who's the insured under this policy?</p> <p>15 A. Well, this is a master policy. So on the</p> <p>16 dec page, it says that it's National Coalition of</p> <p>17 Property Owners and Managers. However, the</p> <p>18 specific insureds are listed on endorsement number</p> <p>19 one.</p> <p>20 Q. The page number is cut off, but I believe</p> <p>21 it's 534; you can find it, as 533 does show.</p> <p>22 Did you find the endorsement? Can you</p> <p>23 explain to me what this is?</p> <p>24 A. That's a self-insured retention</p>
<p style="text-align: right;">Page 27</p> <p>1 A. When we have a deductible, we pay dollar</p> <p>2 one, and then we request reimbursement from our</p> <p>3 insured. When we have a self-insured retention, we</p> <p>4 have no duty to investigate or defend or pay any</p> <p>5 legal fees or anything else until \$250,000 has been</p> <p>6 paid by the insured.</p> <p>7 MR. COHEN: Self-insured retention can be</p> <p>8 any amount, right?</p> <p>9 THE WITNESS: Well, in the case of the</p> <p>10 National Union policies, it's 250, but it's</p> <p>11 any amount.</p> <p>12 Q. Okay. In an example where a policyholder</p> <p>13 did not insure the self-insured retention under a</p> <p>14 National Union CGL policy, when does that policy</p> <p>15 attach?</p> <p>16 MR. COHEN: Just to clarify, are you</p> <p>17 talking about these particular policies or any</p> <p>18 National Union CGL policy?</p> <p>19 MR. CRAMB: No, the particular policies,</p> <p>20 the NCOPO program policies.</p> <p>21 THE WITNESS: When an insured has paid</p> <p>22 \$250,000.</p> <p>23 MR. CRAMB: Mark this entire thing as</p> <p>24 Exhibit 2.</p>	<p style="text-align: right;">Page 29</p> <p>1 endorsement.</p> <p>2 Q. Can you walk me through this or point out</p> <p>3 the key provisions?</p> <p>4 MR. COHEN: Object. You can answer if you</p> <p>5 can.</p> <p>6 THE WITNESS: Okay. Well, the number one</p> <p>7 spells out that we are -- that we have no</p> <p>8 obligation to pay on behalf of the insured, or</p> <p>9 our obligation is only in excess of the</p> <p>10 self-insured retention amount.</p> <p>11 Number two are the reporting requirements</p> <p>12 under the self-insured retention endorsement.</p> <p>13 Number three is the requirement that the</p> <p>14 insured have a TPA to handle claims on their</p> <p>15 behalf.</p> <p>16 And number four is explaining how the</p> <p>17 coverage limits apply.</p> <p>18 Q. And could you explain provision number</p> <p>19 four?</p> <p>20 A. "Self-insured retention shall apply to the</p> <p>21 coverages afforded on a per occurrence basis."</p> <p>22 (Interruption by court reporter for</p> <p>23 clarification.)</p> <p>24 THE WITNESS: I'm just reading, I'm sorry.</p>

Page 30

1 It's basically saying that it applies on a  
2 per occurrence basis.

3 Q. What does that mean?

4 A. Each occurrence or each loss.

5 Q. That there's a self-insured retention for  
6 each occurrence or each loss?

7 A. Yes.

8 Q. And the very last provision that's not  
9 numbered?

10 A. It reflects the amount of the retained  
11 limit.

12 Q. And how would this be different if the  
13 self-insured retention did not include expenses;  
14 what would be the result?

15 A. If it did not include expenses?

16 Q. Uh-huh.

17 MR. COHEN: Objection. You can answer if  
18 you can.

19 THE WITNESS: It would only be eroded by  
20 the insured's payment of indemnity.

21 Q. And does that mean, that it would only  
22 attach after the insured paid \$250,000 in  
23 indemnity?

24 A. I'm not sure. I don't want to speculate.

Page 31

1 Q. Okay. But in this case, this policy  
2 attaches when?

3 A. Our policy was written with a self-insured  
4 retention of \$250,000 per occurrence on an ultimate  
5 net loss basis.

6 Q. And it attaches when an insured does what?

7 A. When an insured has paid a retained limit  
8 of \$250,000, which includes indemnity and expense.

9 Q. This policy form is excess then of this  
10 retention and not another policy; is that correct?

11 MR. COHEN: Objection.

12 THE WITNESS: The policy was written over  
13 \$250,000 self-insured retention.

14 Q. And there's nothing in this policy that  
15 specifies that it's -- that it only attaches after  
16 the exhaustion of some other policy; is that  
17 correct?

18 A. Well, with a \$250,000 self-insured  
19 retention and the number one that explains that we  
20 are in excess of -- it's meant that we are an  
21 excess policy; we are not meant to step in from  
22 dollar one with a duty to defend.

23 Q. But you're excess of a retention; is that  
24 correct?

Page 32

1 A. It was written excess of a retention,  
2 correct.

3 Q. And not excess of another insurance  
4 policy; is that correct?

5 MR. COHEN: Object.

6 Q. The way it's written?

7 A. The way it's written, it was written over  
8 \$250,000 self-insured retention.

9 Q. And are you familiar with policies that  
10 are written over a specific insurance policy limit?

11 A. I have typically not handled those types  
12 of policies.

13 Q. Are you familiar with them?

14 A. Not extremely familiar with them, no.

15 Q. Fair enough.

16 Do you know what it means to say that an  
17 excess insurance policy follows form?

18 A. Yes.

19 Q. What does that mean?

20 A. It means it has the exact same terms and  
21 conditions of the underlying policy.

22 Q. Is this an excess insurance policy that  
23 follows form?

24 A. I do not believe it is.

Page 33

1 Q. Is there anything in this policy that  
2 would prevent an insurer's defense or indemnity  
3 payments that are paid by another insurer from  
4 applying against their retention?

5 MR. COHEN: Objection.

6 THE WITNESS: I don't understand your  
7 question.

8 Q. Is there anything -- well, I believe that  
9 you testified that this insurance policy attaches  
10 after an insured, and you can clarify, but either  
11 incurs or spends \$250,000 on defense or indemnity;  
12 is that correct?

13 A. Correct.

14 Q. And I'm wondering if there's anything in  
15 this insurance policy that states that if another  
16 insurance company were to pay that \$250,000, if  
17 that would not count towards exhausting the  
18 retention?

19 A. The policy doesn't address that.

20 Q. So there's nothing in this policy that  
21 says that that would not count; is that correct?

22 MR. COHEN: Objection. Asked and  
23 answered.

24 THE WITNESS: There's nothing specifically



<p style="text-align: right;">Page 34</p> <p>1 worded in the policy.</p> <p>2 Q. Does this policy refer to a schedule of</p> <p>3 underlying insurance?</p> <p>4 A. No.</p> <p>5 Q. Does it require the existence of an</p> <p>6 underlying primary policy?</p> <p>7 A. No.</p> <p>8 Q. Does it state that it applies in excess of</p> <p>9 a primary policy?</p> <p>10 A. It doesn't specifically state that it</p> <p>11 applies in excess of a primary policy. It's excess</p> <p>12 of a self-insured retention, which makes it excess</p> <p>13 of underlying coverage or underlying limits.</p> <p>14 Q. How does it make it excess of underlying</p> <p>15 coverage or underlying limits?</p> <p>16 A. Because we have no duty to do anything</p> <p>17 until underlying limits have eroded.</p> <p>18 Q. What do you mean by underlying limits?</p> <p>19 A. Well, in this case, \$250,000.</p> <p>20 Q. So you're not referring to the limit of</p> <p>21 another insurance policy, just the limit of the</p> <p>22 self-insured retention?</p> <p>23 MR. COHEN: Objection.</p> <p>24 Q. I just want to clarify what you meant by</p>	<p style="text-align: right;">Page 36</p> <p>1 A. It just explains the -- how the insurance</p> <p>2 cover is placed.</p> <p>3 Q. And 4A, what does that explain?</p> <p>4 A. It says that the insurance is primary</p> <p>5 except when B below applies.</p> <p>6 Q. Can you walk me through B?</p> <p>7 MR. COHEN: Objection.</p> <p>8 Q. Can you explain the circumstances under</p> <p>9 which this would not be a primary policy?</p> <p>10 A. Well, they added the self-insured</p> <p>11 retention endorsement.</p> <p>12 Q. So that the policy is excess of</p> <p>13 self-insured retention?</p> <p>14 A. Yes.</p> <p>15 Q. But does that change it from being a</p> <p>16 primary policy?</p> <p>17 MR. COHEN: Objection.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 Q. According to 4A, this insurance is primary</p> <p>20 except when B below applies; is that correct?</p> <p>21 A. That's what it states.</p> <p>22 Q. Can you explain to me the circumstances as</p> <p>23 they are spelled out in B under which this policy</p> <p>24 would not be a primary policy?</p>
<p style="text-align: right;">Page 35</p> <p>1 limit.</p> <p>2 A. Well, the limit specified in the policy.</p> <p>3 Q. And what is the limit specified in this</p> <p>4 policy?</p> <p>5 A. \$250,000 self-insured retention.</p> <p>6 Q. It's not another insurance policy's limit?</p> <p>7 A. It's not another insurance policy's limit.</p> <p>8 Q. There's a term that's used throughout this</p> <p>9 endorsement, that's "ultimate net loss"?</p> <p>10 A. Yes.</p> <p>11 Q. Is that defined somewhere in this policy?</p> <p>12 A. No.</p> <p>13 Q. What is that?</p> <p>14 A. It's not defined in the policy. The usage</p> <p>15 in the insurance industry is ultimate net loss is</p> <p>16 the ultimate net loss, indemnity and expense.</p> <p>17 Q. Are you familiar with the "other insurance</p> <p>18 clause" in this policy?</p> <p>19 A. I would have to look at it.</p> <p>20 Q. Could you refer to the "other insurance</p> <p>21 clause," which is on page 461. Can you explain the</p> <p>22 effect of this provision?</p> <p>23 A. In general?</p> <p>24 Q. Yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. When you say explain, you want me to walk</p> <p>2 through the coverages?</p> <p>3 Q. Well, under what circumstances -- my</p> <p>4 understanding of this policy is there are certain</p> <p>5 circumstances spelled out in 4B --</p> <p>6 A. Right.</p> <p>7 Q. -- that determine whether or not this is a</p> <p>8 primary or excess insurance policy. And I want you</p> <p>9 to explain to me what those circumstances are.</p> <p>10 MR. COHEN: You want her to paraphrase</p> <p>11 what 4B says?</p> <p>12 A. THE WITNESS: Would you like me to read</p> <p>13 4B?</p> <p>14 Q. Do you have an understanding of what 4B,</p> <p>15 the effect of clause 4B is?</p> <p>16 A. I do.</p> <p>17 Q. And what is that?</p> <p>18 A. It states the circumstances under which</p> <p>19 this policy is excess.</p> <p>20 Q. I think you testified earlier today that</p> <p>21 under some circumstances, Virginia Surety wrote an</p> <p>22 insurance policy that insured -- that also provided</p> <p>23 insurance to insureds under the National Union CGL</p> <p>24 policies; is that correct?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. Correct.</p> <p>2 Q. What is the nature of their policy?</p> <p>3 A. When you say nature, what do you mean?</p> <p>4 Q. What type of policy is it?</p> <p>5 A. It was a primary policy.</p> <p>6 Q. And do you know what its limits were?</p> <p>7 A. \$250,000 indemnity, and they paid expenses</p> <p>8 outside of the limits.</p> <p>9 Q. Does the Virginia Surety policy fit within</p> <p>10 any of the insurance described within 4B?</p> <p>11 A. No.</p> <p>12 Q. No?</p> <p>13 A. No.</p> <p>14 Q. In the circumstance where Virginia Surety</p> <p>15 insured an insured that was also insured by the</p> <p>16 National Union CGLs, there's nothing in 4B that</p> <p>17 would make the Virginia Surety -- I'm sorry -- the</p> <p>18 National Union policy excess; is that correct?</p> <p>19 A. Not in 4B.</p> <p>20 Q. But somewhere else in the policy?</p> <p>21 A. Yes.</p> <p>22 Q. And can you explain that?</p> <p>23 A. In the self-insured retention endorsement.</p> <p>24 Q. And does the self-insured retention</p>	<p style="text-align: right;">Page 40</p> <p>1 different.</p> <p>2 Q. In what way?</p> <p>3 A. It appears that there are different CGL --</p> <p>4 a different CGL form attached and a different</p> <p>5 declarations page.</p> <p>6 Q. What does the term "stand-alone excess"</p> <p>7 mean?</p> <p>8 A. I believe it means it's not following</p> <p>9 form.</p> <p>10 Q. Can you explain to me when this policy</p> <p>11 attaches?</p> <p>12 Sorry. I believe my tabs have been</p> <p>13 removed. I believe there's a self-insured</p> <p>14 endorsement in here as well.</p> <p>15 MR. COHEN: Should be endorsement five,</p> <p>16 according to the schedule.</p> <p>17 MR. CRAMB: I'm not sure they're in order.</p> <p>18 MR. COHEN: 03836.</p> <p>19 THE WITNESS: Would you please repeat the</p> <p>20 question?</p> <p>21 Q. Can you explain to me when the insurance</p> <p>22 policy attaches to a loss?</p> <p>23 A. As written, it was written with a \$250,000</p> <p>24 self-insured retention.</p>
<p style="text-align: right;">Page 39</p> <p>1 endorsement say that it is excess of the Virginia</p> <p>2 Surety policy?</p> <p>3 A. No. It says it is excess of a</p> <p>4 self-insured retention.</p> <p>5 Q. Okay. Earlier you also referred to</p> <p>6 something called a stand-alone excess policy.</p> <p>7 Would you take a look at what's behind tab B.</p> <p>8 Does this appear to be what you're</p> <p>9 referring to when you described the stand-alone</p> <p>10 excess --</p> <p>11 A. Yes.</p> <p>12 Q. -- policy?</p> <p>13 In general, can you describe the</p> <p>14 differences between this and the National Union CGL</p> <p>15 policies?</p> <p>16 A. I would have to review the policy forms.</p> <p>17 Q. Are you generally familiar with the</p> <p>18 differences between the CGL policies, the National</p> <p>19 Union CGL policies, and the stand-alone excess</p> <p>20 policies in a general way?</p> <p>21 A. In a general way, I am.</p> <p>22 Q. Can you describe to me in a general way</p> <p>23 what the differences are?</p> <p>24 A. Just the forms that they're written on are</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Does this appear to be the same</p> <p>2 self-insured retention that we referred to in the</p> <p>3 National Union CGL?</p> <p>4 A. Yes.</p> <p>5 MR. COHEN: Same form or same amounts?</p> <p>6 Q. I would appreciate it if you answered both</p> <p>7 of those questions. Is it the same form?</p> <p>8 A. It appears to be.</p> <p>9 Q. And is the self-insured retention the same</p> <p>10 amount?</p> <p>11 A. Yes.</p> <p>12 Q. So explain to me how this policy is --</p> <p>13 when it attaches.</p> <p>14 A. As written, it was intended to attach over</p> <p>15 a self-insured retention of \$250,000.</p> <p>16 Q. Why did you clarify your answer by "as</p> <p>17 written"? What did you mean by as written, as</p> <p>18 opposed to what?</p> <p>19 A. As it is written.</p> <p>20 Q. Is that as opposed to something else in</p> <p>21 practice?</p> <p>22 A. No. Just as written, it applies over a</p> <p>23 \$250,000 self-insured retention.</p> <p>24 Q. And does this policy attach to a specific</p>



<p style="text-align: right;">Page 42</p> <p>1 loss once an insured has incurred \$250,000 of 2 defense expenses or indemnity expenses? 3 A. Yes. 4 Q. Does this policy refer to a schedule of 5 underlying insurance? 6 A. I have not reviewed the entire policy. I 7 see no reference to a schedule of underlying 8 insurance. 9 Q. Does this policy state that it applies in 10 excess of a primary insurance policy? 11 A. It states that it applies in excess of a 12 self-insured retention. 13 Q. Does it mention any other insurance 14 policies? 15 A. No. 16 Q. All right. If you could please just jump 17 back to the National Union CGL policy. 18 As you testified earlier, some of the 19 insureds that were insured by this type of policy 20 were also insured by Virginia Surety. 21 A. Yes. 22 Q. And you're familiar with the Virginia 23 Surety policy or the coverage that Virginia Surety 24 provided in those examples?</p>	<p style="text-align: right;">Page 44</p> <p>1 policy attaches? 2 A. Yes. 3 Q. How does that change? 4 A. Because we were excess and they were 5 primary, and they had the obligation to pay defense 6 costs until they paid the limit of their indemnity. 7 Q. Where in this policy does it say that you 8 were excess and Virginia Surety was primary? 9 A. It doesn't state that in the policy. 10 Q. How do you come to that conclusion? 11 A. By practice. 12 Q. Can you explain that? 13 A. We are excess; we don't have a duty to 14 defend. 15 Q. You don't have a duty to defend under this 16 policy? 17 A. Until the self-insured retention is 18 exhausted. However, in the case of Virginia 19 Surety, their policy provides defense payment in 20 excess of their indemnity, so they had the 21 continuing obligation to pay defense costs. 22 Q. So at a certain point, would National 23 Union have a shared obligation to pay defense 24 costs?</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I'm familiar with the limits, and I have 2 seen a copy of the policy. 3 Q. When did you first see a copy of the 4 policy? 5 A. It was quite some time ago. 6 Q. Under what circumstances? 7 A. I don't recall. 8 Q. Do you recall when you first received 9 notice of a claim over \$100,000 from York in 10 connection with the NCOPO program? 11 A. I don't recall. 12 Q. In an example where both National Union 13 and Virginia Surety wrote insurance policies to a 14 given insured, does that change when the National 15 Union policy attaches? 16 MR. COHEN: Objection. 17 THE WITNESS: I don't understand the 18 question. 19 Q. Well, if -- you explained at some length 20 when the National Union CGL policy attaches, 21 correct? 22 A. Correct. 23 Q. And in the example of when Virginia Surety 24 also insured an insured, does that change when this</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. COHEN: Objection. 2 THE WITNESS: That's not the way it was 3 handled from the outset by Virginia Surety. 4 Q. Well, how would Virginia Surety affect 5 whether or not National Union would have a defense 6 obligation? 7 MR. COHEN: Objection. 8 THE WITNESS: Do I answer? 9 MR. COHEN: If you can. 10 THE WITNESS: Based on what their policy 11 provisions state, based upon their -- the duty 12 that they had under their policy. 13 Q. They have a continuing obligation for 14 defense costs without limit? 15 A. Until they pay the indemnity limit under 16 their policy. 17 Q. But why wouldn't National Union have a 18 shared defense obligation after \$250,000 was spent? 19 A. Because we were written to be -- even 20 though we're on primary paper, we're excess of the 21 self-insured retention. The fact that there was a 22 buy-back on the SIR, we were still considered to be 23 excess of whatever was underlying our policy. 24 Q. What do you mean by a buy-back of the SIR?</p>

Page 46

1 A. It appears that the coverage was placed,  
2 and the insureds chose to place coverage, instead  
3 of retaining that exposure, out of their own  
4 pocket.

5 Q. And you said that because they bought back  
6 the SIR, National Union is then excess of whatever  
7 was underlying the National Union policy?

8 A. Yes.

9 Q. And why would the fact that an insured  
10 insured the SIR change National Union's  
11 obligations?

12 MR. COHEN: Objection.

13 THE WITNESS: I don't know.

14 Q. Is there something in the policy that says  
15 when an insured insures the SIR, that it changes  
16 National Union's obligations?

17 A. There's nothing in our policy.

18 Q. Is there anything in that policy that says  
19 that when an insured insures the SIR, that the  
20 attachment point changes?

21 A. There's nothing in the policy that  
22 addresses insurance coverage placed on an SIR in  
23 the policy.

24 Q. So there's nothing in the policy that says

Page 48

1 Q. Are you the Betty that it's addressed to?

2 A. I am the Betty that it's addressed to.

3 Q. Can you explain -- the e-mail says, "I  
4 spoke with Pat Jops at VA Surety," which I assume  
5 is Virginia Surety. "He confirms that he will  
6 honor the same arrangement that we had on Hunjak  
7 where Virginia Surety fronted the full 250,000  
8 indemnity payment."

9 What did he mean by "the same  
10 arrangement"?

11 A. That they would tender the full 250  
12 indemnity limit for purpose of settlement. I'm not  
13 clear which case that's in reference to.

14 Q. Did Virginia Surety reserve rights to  
15 raise the defense cost issue in cases where it  
16 fronted the 250,000 indemnity payment or tendered  
17 it, as you say?

18 MR. COHEN: At what point in time? At any  
19 point in time; this particular point in time?

20 Q. Did it always?

21 A. No.

22 Q. When did it start?

23 A. I don't remember the specific point in  
24 time when it started.

Page 47

1 that your attachment point changes when the insured  
2 insures the SIR?

3 A. It's not addressed in the policy at all.

4 Q. Can you explain what happens under the  
5 stand-alone excess policies when an insured insures  
6 or when Virginia Surety insured the SIR, insured an  
7 insured's SIR? I'm sorry. Going to start that one  
8 over.

9 Can you explain under the stand-alone  
10 excess policies what happens when Virginia Surety  
11 insures an insured's SIR?

12 A. Are you asking me to speak for what  
13 Virginia Surety does under their policy?

14 Q. No. What are National Union's  
15 obligations?

16 A. I believe they are the same as they were  
17 under the other policy.

18 MR. CRAMB: Mark this, please.

19 (Exhibit No. 3, LEXCF 018007, marked for  
20 identification.)

21 Q. Would you please read the e-mail to  
22 yourself that's been marked as Exhibit Number 3.

23 Are you familiar with this e-mail?

24 A. It's a long time ago. Vaguely familiar.

Page 49

1 Q. At some point before January 22nd, 2004?

2 A. If that's what this e-mail is referring  
3 to, then it would be; but I can't say for sure.

4 Q. And who's Pat Jops? Do you know who Pat  
5 Jops is?

6 A. He's someone who works at Virginia Surety.  
7 I'm not sure what his title is.

8 Q. How about Mr. O'Brien?

9 A. I don't know who that is.

10 Q. And Chuck?

11 A. Chuck would -- where is that?

12 Q. Third paragraph, last sentence.

13 A. The only Chuck that I am aware of is Chuck  
14 Gillis, who works for York. I'm not speculating  
15 that that's who they are referring to here.

16 MR. CRAMB: This will be Exhibit 4.

17 (Exhibit No. 4, LEXCF 001293 through LEXCF  
18 001294, marked for identification.)

19 Q. Exhibit Number 4 is a chain of e-mails  
20 that you were involved in, at least in the middle  
21 of the first page.

22 In your e-mail from June 27 at 10:46 a.m.,  
23 which is in the middle of the first page of this  
24 exhibit, you demanded that Virginia Surety tender

1 STATE OF NEW YORK ) Pg\_\_of\_\_Pgs

2 ss:

3 COUNTY OF NEW YORK )

4 I wish to make the following changes,  
5 for the following reasons:

6 PAGE LINE

7 13 22 CHANGE: LGA should be MGA

8 REASON: \_\_\_\_\_

9 \_\_\_\_\_ CHANGE: \_\_\_\_\_

10 REASON: \_\_\_\_\_

11 \_\_\_\_\_ CHANGE: \_\_\_\_\_

12 REASON: \_\_\_\_\_

13 \_\_\_\_\_ CHANGE: \_\_\_\_\_

14 REASON: \_\_\_\_\_

15 \_\_\_\_\_ CHANGE: \_\_\_\_\_

16 REASON: \_\_\_\_\_

17 \_\_\_\_\_ CHANGE: \_\_\_\_\_

18 REASON: \_\_\_\_\_

19 \_\_\_\_\_ CHANGE: \_\_\_\_\_

20 REASON: \_\_\_\_\_

21 \_\_\_\_\_ CHANGE: \_\_\_\_\_

22 REASON: \_\_\_\_\_

23 \_\_\_\_\_ CHANGE: \_\_\_\_\_

24 REASON: \_\_\_\_\_

25

Betty Viscione  
Betty Viscione, Deponent